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VII JORNADAS DE TIMOR DA UNIVERSIDADE DO PORTO

East Timor : *A Time For Justice Before The International Criminal Court*

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Since 1975, gross violations of humanitarian law have been carried out on the territory of East Timor.

For more than 20 years now, we have seen the so called potential powers turning a blind eye to the continuing breach of the Hague, Geneva and Genocide Conventions; on that small part of the world where economic greed takes priority over the lives of human beings.

The proposed International Criminal Court will have universal jurisdiction to bring to justice those individuals who commit the most serious crimes of concern to the international community.

Unlike the International Court of Justice, whose contentious jurisdiction is only restricted to States, the International Criminal Court will have the capacity to indict individuals responsible for violations of humanitarian law.

In the East Timor case this would mean that the now feared Kopassus commanders would be brought before this Court to answer charges of killings, torture, harassment and other violations of human rights of the people of East Timor.

Furthermore, unlike the Yugoslavia and Rwanda war crimes Tribunals, the jurisdiction of the International Criminal Court will not be chronologically or geographically limited.

For the first time in history there is the prospect of creating a positive global duty on individuals to respect the rule of law, without relying on the defence of State responsibility. In situations such as the East Timor, the only recourse is to impose sanctions, embargoes or the use of military force. However, this has not happened in this case. Major western powers carry on

trading with the dictatorship regime which has so far killed more than 200.000 people in Timor.

One of those European powers is the United Kingdom which is the major supplier of arms and military related trade with Indonesia. Not only does the UK provide Indonesia's forces with specialist military training as it carries on selling arms, (Ultima weapons, one of the most advanced killing machine guns), Land Rovers, aerospace's, all of which improve the killing capacity of Suharto's regime.

This is a serious case of human rights violated by a Government which has been using illegitimate force to remain in power.

But, what sort of crimes committed in the territory of East Timor could be brought before this International Criminal jurisdiction ?

So far, the Prepcom agreed to include in the Draft Statute for the International Criminal Court, crimes such as genocide, crimes against humanity, serious violations of the laws and customs applicable in armed conflict (war crimes), aggression and other crimes are still under thorough discussion.

As to the crime of genocide, the Prepcom has decided to adopt the Genocide Convention with no amendments, as many of the acts prohibited under this Convention can also constitute crimes against humanity when committed against other groups, which will include social and political groups.

Crimes against humanity are systematic committed against the East Timorense people. Torture, for instance, has been defined in more detail by

the Prepcom. In their analysis, the Prepcom refers to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment and at the same time elaborated a detailed list of elements that could amount to "torture".

Another crime of international concern is the systematic beating and rape of Timorense women, methods which are tragically used as a tool of war. Victims of rape in the Former Yugoslavia struggle to have rape classified as a war crime by that Tribunal. In the draft Code for the International Criminal Court this crime is defined in a broader sense as to include wider range of acts of sexual violence.

An International Criminal Court would bring confidence to thousands of timorense victims who through fear of further reprisal or shame do not feel safe enough to speak out.

The demands of international criminal justice will greatly depend on the total co-operation of States. As we all know, the Indonesian government has since 1975 violated every accord and international Conventions, including its own national laws and codes of criminal procedure. By remaining on the territory of East Timor, which is still under Portuguese administration, Indonesia is violating the UN Charter and customary international law.

The international community will thus benefit from a permanent mechanism by which individuals can be held accountable for violations of International Law. Without International condemnation of Indonesia's brutal and illegal occupation of East Timor, thousands more will continue to be killed, tortured, subjected to arbitrary detention, unfair trials and imprisoned for the simple expression of their beliefs in democracy and human rights.

The establishment of the International Criminal Court will bring hope to those thousands of Timorense whose dreams lay on the hope of life and freedom of its people. This will only be achieved if constant publicity is focused on all those governments which for the last 22 years have supported, aided thus encouraging the Indonesian government to continue violating the rules of customary international law and basic human rights.

The cry for justice will only be silenced when East Timor is finally given a chance.

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